

ZONING BOARD OF APPEALS

MINUTES

November 15, 2005

Members Present

Maureen Kangas – Vice Chairman
MaryAnn Leenig
Lynne Raver
Marc Breimer
April Callahan

Members Absent

Barry Silverstein – Chairman
Ronald Critelli

Others Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Edward Peters - Town Building Inspector, Acting Zoning Administrator

Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.

Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:03 p.m. by the Vice-Chairman. She made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Vice-Chairman Kangas announced that Alternate ZBA Members Marc Breimer and April Callahan are on the Board for this meeting with full voting rights.

Vice-Chairman Kangas called for comments or corrections to the minutes of the October 2005 meeting. Hearing none, she called for a motion to accept the minutes as written.

Marc Breimer made the motion to accept the minutes from the October 18, 2005 meeting.

Lynne Raver seconded.

Motion Carried

Maureen Kangas – Aye
MaryAnn Leenig – Aye
Lynne Raver – Aye
Marc Breimer – Aye
April Callahan - Aye

The Vice-Chairman announced the adoption of the decision regarding appeal number ZB05-017, for Frank Garnot. She read the resolution, seconded and motion carried.

Old Business

Continued Public Hearing for:

Grid Number: 6154-00-898490 Address: 70 Route 9

Application Number: ZB05-007, submitted by Cranesville Block Company, to construct a 50' silo where the maximum height allowed is 35' in a GB Zoning District.

Said request is a violation of Chapter 150-33.B. of the Code of the Town of Fishkill.

Vice-Chairman Kangas announced that the Applicant has requested an adjournment until the tests requested by the ZBA have been preformed and they receive the results.

Vice-Chairman Kangas called for a motion to Adjourn this Public Hearing

Motion to Adjourn the Public Hearing made by April Callahan

Second by MaryAnn Leenig

Motion Carried

Maureen Kangas – Aye

MaryAnn Leenig – Aye

Lynne Raver – Aye

Marc Breimer – Aye

April Callahan - Aye

Grid Number: 5953-00-785450 Address: Melzingah Dam Rd

Application Number: ZB05-010, submitted by David Gianna and Denise Zottola, requesting the following variances. 1) front yard setback of 42.9ft where 75ft is required, 2) side yard setback of 37.9ft where 50ft is required, 3) minimum lot size of 1.52 acres where 4 acres is the minimum and 4) access to the property from other than the a main road.

Said requests are a violation of Chapters 150-33.A. and 150.26.A. of the Code of the Town of Fishkill.

Vice-Chairman Kangas announced that the Applicants have requested an adjournment until the December 13, 2005 meeting.

Vice-Chairman Kangas called for a motion to Adjourn this Public Hearing

Motion to Adjourn the Public Hearing made by Marc Breimer

Second by Lynne Raver

Motion Carried

Maureen Kangas – Aye

MaryAnn Leenig – Aye

Lynne Raver – Aye

Marc Breimer – Aye

April Callahan - Aye

Vice-Chairman Kangas announced that the December 2005 meeting would be adjourned and resume in January. Nancy Lecker asked for verification that the conversation was regarding the December 2006 schedule, that there was already an appeal set for the December 13 meeting. The question was posed to Janis Gomez Anderson as to whether the meeting could be cancelled at this point.

Ms. Gomez Anderson advised that the Board would not be able to close any Hearings at this meeting unless the Applicants agree to a delay in the vote. If the Hearing is closed and it is not voted on within 62 days, it is an automatic denial. The Vice-Chairman stated that it will need to

be discussed if there is no quorum for December. Ms. Gomez Anderson asked if the meeting could be moved up a week. Ms. Lecker stated that it was already one week earlier. Ms. Gomez Anderson asked if it could be moved another week. Ms. Lecker advised that it could not because the County must respond to the appeal prior to the Public Hearing. They require 30 days.

Ms. Gomez Anderson stated that she would look at the January date to see if it falls within the 62-day period. She advised the Vice-Chairman to continue with the meeting.

Grid Number: 6256-04-623284 Address: 1750 Route 52
Application Number ZB05-012, submitted by Sign-A-Rama, representing Blue Seal Feeds, Inc, requesting a 34 sq. ft. variance to replace the existing sign with a 70 sq. ft. sign where 36sq. ft. is the maximum allowed in an GB Zoning District.
Said request is a violation of Chapter 150-30.D of the Code of the Town of Fishkill.
This request is made by the applicant, who seeks relief from the Zoning Administrator's decision regarding Chapter 150-30.D. of the Code of the Town of Fishkill, New York.

Vice-Chairman Kangas announced that the Applicants have withdrawn their application. She read a letter into the record reflecting their decision.

Vice-Chairman Kangas called for a motion to Close this Public Hearing
Motion to Close this Public Hearing made by Lynne Raver
Second MaryAnn Leenig
Motion Carried

Maureen Kangas – Aye
MaryAnn Leenig – Aye
Lynne Raver – Aye
Marc Breimer – Aye
April Callahan – Aye

Grid Number: 6155-17-069012 Address: 20 Garden Place
Application Number ZB05-013, submitted by Balanced Builders, Suzanne Timmer and Michael Connors, requesting a 3ft variance to increase a 16.6 ft non-conforming rear setback to 13.6 ft where 40 ft is the minimum allowed in an R-20 Zoning District to construct a addition and renovation to the rear of their home.

Grid Number: 6155-17-069012 Address: 20 Garden Place
Application Number ZB05-014, submitted by Balanced Builders, Suzanne Timmer and Michael Connors, requesting a 20 ft variance creating a 15 ft front yard setback where 35 ft is the minimum and a 5 ft variance creating a 5 ft side yard setback where 10 ft is the minimum in an R-20 Zoning District to construct a detached garage.

Represented by: Suzanne Timmer and Michael Connors

Vice-Chairman Kangas advised that there are no new communications and asked the Applicants if they have anything new to add. They advised that had nothing to add.

The Vice-Chairman called for questions or comments from the Floor. None Voiced.

The Vice-Chairman called for questions or comments from the Board.

MaryAnn Leenig stated that she asked at the prior meeting what they were doing with the property next door. She advised that the Applicant did not know what they were doing with it, but that they were using it to park their trucks. She stated that she now has heard that they may be renting it.

Ms. Timmer stated that they are renovating it to live in it temporarily.

Vice-Chairman Kangas asked which of the two properties they plan to live in. Ms. Timmer advised that they are keeping the property next to them to renovate and live in, because their current house is not livable. They will shut off the water to keep the pipes from freezing while they wait to hear the ZBA decision. She advised that they plan to keep both houses.

Ms. Leenig asked if they were keeping both houses, why they don't put the garage on the other side of the house. Ms. Timmer stated that it would not fit on the other side of the house. The space between the two houses is 17ft and 15ft, totaling 32ft. Ms. Leenig asked if the trees are the only reason they wouldn't push it back further into the property. Ms. Timmer agreed that the trees are part of the reason. Michael Connors advised that they are also concerned what would happen to the neighbor's yard if the driveway went that far back. He would be curious to see what the rainfall would do. Ms. Timmer advised that if they have to move the garage further back, they will have to put asphalt all the way back. Ms. Timmer stated that they were advised that it was not an option due to the fact that only a certain percentage of the property can be covered by structures and asphalt.

Ms. Leenig referred to Ed Peters for verification. Mr. Peters stated that it was true. He stated that there is a limit of area coverage between sidewalks, asphalt and structures. He stated that he did not have the chart with him but that it was either 18% or 22%.

Mr. Connors asked Ms. Leenig for verification that she stated she wasn't able to speak. Ms. Leenig stated that she was allowed to ask questions, she would not be able to vote.

Mr. Peters stated that the more blacktop that is put in Beacon Hills, the more runoff will occur. It is something the Board may want to consider.

Ms. Timmer reminded the Board that they have a sapling, which can be moved, but would prefer not to cut down their trees.

Vice-Chairman Kangas asked for verification of which house they will be living in. Ms. Timmer stated that to look at the two houses from the street, they are going to live in the house on the right until they renovate their house. Once that is done, the house on the right will be their space. Ms. Timmer stated that her mother visits and stays there. Vice-Chairman Kangas asked for verification that it will not be used for the commercial business. Ms. Timmer confirmed that they would not.

The Vice-Chairman stated that she understands the neighbor's concerns and that they do have several vehicles. Although it is not the business of the ZBA what you do with the property, to grant a variance the ZBA looks for the specifics as to what will be done, what the hardship is. She stated that she did do the site visit and understands their reasons, but also wants to be sure that it will not be a hardship to the neighborhood.

Janis Gomez Anderson stated that the criteria that would apply would be the alternatives available without a variance and whether the difficulty was self-created. The difficulty is supposed to be associated with the property.

Ms. Timmer stated that they are currently residing in the house that they want to live in. They purchased the property next door to control what happens to their property. The previous neighbors, although well liked, did play their music loud and she could hear them in the morning because the houses are so close. She stated that they will eventually sell the second property for financial reasons, but currently she has offered the house to her mother and sister.

Ms. Timmer referred back to the garage and stated that they would like to have the garage to house one car and truck and for storage. She advised that they currently have Michael's work truck and trailer, a truck that she drives and the antique car. She stated that the neighbor across the street and blacktopped a large section of their property to accommodate the six vehicles that they own. She stated that there is another home on Old Town Rd that has blacktopped a large section in the front of their property and it is something that they do not want to do. Ms. Timmer stated that they want to create a very beautiful home. MaryAnn Leenig stated that although they have the right to do this with their property, she doesn't like the fact that the garage is going to be that far forward and they will still have the cars and trucks.

Councilman Ronald Leenig addressed the Board as both a Councilman representing the residents and as a resident of the area. He stated that the question is whether the garage can be attached to the house without a variance. The answer is yes. We have zoning laws, but recognize hardships. They need a foot in the back for an addition; the residents don't have a problem with that. Councilman Leenig asked how he is supposed to respond to his constituents when asked why the garage was allowed to be out there. What was the reason? There is no reason. The Zoning Board said it was ok. If there is a zoning issue why it is out there that would be fine, but there isn't.

Ms. Timmer replied that they were told there was an issue due to the asphalt. If the garage is placed in the back they would have to asphalt the entire area, they will have no backyard.

Ed Peters stated that they would not have to asphalt. They could leave a grade that is pervious.

Marc Breimer stated that there are products that allow for the growth of grass through a sustainable vehicle passable material.

Ms. Timmer stated that the material is very expensive and they would not be able to afford it.

Mr. Peters stated that there is nothing in the code that requires driveways to be blacktopped.

Lynne Raver asked if a swale could be created to deal with runoff. The property seems to be on a hill.

Vice-Chairman Kangas asked if the Applicants had a problem with the slope on the side of the house. According to Councilman Leenig, the garage can be attached to the side of the house.

Ms. Timmer reiterated that the trees are there and they would have to remove them.

Vice-Chairman Kangas called for additional comments from the Board. None voiced.

Janis Gomez Anderson went back to the issue of the December and January meetings. She advised that the December Meeting can be cancelled but the Hearings cannot be closed unless the Applicants are present and agree to wait until the January meeting to hear the vote.

Vice-Chairman Kangas advised that the Hearings would be adjourned until the January meeting. Ms. Gomez Anderson stated that the Hearings can be closed if the Applicants agree to waive the 62-day limit. It will be to their benefit since it is an automatic denial if the vote is not taken within 62 days.

The Vice-Chairman advised the Applicants that her concern is that there may not be a quorum for the next meeting. Janis Gomez Anderson restated to the Applicants what the Vice-Chairman is asking for, is permission to extend the time to vote to closed the Public Hearing. Ms. Gomez Anderson advised that another option is to move the January meeting up one week. That would put the ZBA back into the 62-day timeframe and solve all of the problems.

Several Board Members stated that they did not have a problem with the date change. Vice-Chairman Kangas stated that the meeting should be changed. Ms. Timmer asked what the date would be. Ms. Gomez Anderson stated that it would be by the second Tuesday, January 10.

Vice-Chairman Kangas called for a motion to Close this Public Hearing
Motion to Close the Public Hearing made by Marc Breimer
Second Lynne Raver
Motion Carried

Maureen Kangas – Aye
MaryAnn Leenig – Aye
Lynne Raver – Aye
Marc Breimer – Aye
April Callahan - Aye

New Business

Grid Number: 6155-03-436380 Address: 125 Greenwood Dr.
Application Number ZB05-018, submitted by Joseph and Jenna Carpenter, requesting a 25ft variance to place a shed, creating a 25ft front yard setback where 50ft is the minimum allowed in an R-40 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Represented by: Joseph Carpenter

Vice-Chairman Kangas read communications from the following:
The Dutchess County Department of Planning citing this as a matter of local concern.
The Town of Fishkill Planning Board reviewed the application and recommends against setting a precedent of allowing accessory buildings (sheds) in the frontage portion of a residential property.

Joseph Carpenter presented that Board with pictures taken on October 15, 2005 of the rear of his property. He stated that a copy of his survey was submitted and if the Board referred to it and looked at the area where his pool is, you can see that if the shed had been placed in the backyard, it would have floated down the river to a neighbor's house. He stated that he had nine inches of water in his basement and his next-door neighbor had four feet.

Mr. Carpenter stated that he is a land surveyor and deals with setbacks on a daily basis. Prior to having the shed placed, he contacted the Town and asked about the Zoning Law. In error, he was told that it was a 25ft setback. He contacted Mr. Shed and ordered the shed and was told that it was a six to ten week wait for it to be delivered. At that point, he leveled that portion of the property in preparation for the shed. The shed was in place a few days before the permit was issued. Mr. Carpenter advised that when he did apply for the permit, he included the plans and was issued a building permit. At that time, he was also building a deck around his pool. When the deck was completed, he then received notice that the shed was not in compliance. Instead of arguing that he had a valid Building Permit, he decided to come before the Zoning Board.

Mr. Carpenter pointed to his survey and advised that the area between the deck and where the shed now sits is where his septic system is. He advised that he went to the County Building to see if they had a copy of the as-built drawing to show exactly where the pits were, but they did not.

He stated that looking at the survey, he has almost 500 feet in the rear, but the river has a curve and invaded the property directly up to the house.

Vice-Chairman Kangas asked if any of the neighbors complained about the shed.

Mrs. Horne, Greenwood Dr, stated that she lives there and agrees with Mr. Carpenter that if the shed was any further back, it would have floated away.

Mr. Carpenter referred back to the pictures. He stated that they were taken prior to the river cresting and after it did, the entire pool was submerged. The fire department came but could not pump out the house because it was surrounded by water.

Janis Gomez Anderson asked what the height of the shed was. Mr. Carpenter stated that it is between ten and twelve feet. It is a standard one story 10' x 14' shed.

Mrs. Horne commented that it matches the house. Mr. Carpenter stated that he did have it made to match the house.

Andrea Berg, Greenwood Dr., commented that she would like to consent to the shed. It looks nice and is better than the old shed.

Vice-Chairman Kangas called for additional comments or questions from the Board. Hearing none, she called for a motion to Close or Adjourn this Public Hearing.

Motion to Close the Public Hearing made by MaryAnn Leenig
Second Lynne Raver
Motion Carried

Maureen Kangas – Aye
MaryAnn Leenig – Aye
Lynne Raver – Aye
Marc Breimer – Aye
April Callahan - Aye

Grid Number: 6055-19-722215 Address: 526 Washington Ave
Application Number ZB05-019, submitted by Charles Lyons, requesting an 8ft variance to construct a covered front porch, creating a 27ft front yard setback where 35ft is the minimum allowed in an R-20 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Vice-Chairman Kangas read communications from the following:
The Dutchess County Department of Planning citing this as a matter of local concern.
The Town of Fishkill Planning Board cites this as a matter of local concern but is reluctant to offer a positive recommendation.
Note from Mr. Harry Sylvaine, Washington Ave, offers no objection.

The Vice-Chairman called for the representatives. No response.

Harmon Boyd, Washington Ave, asked if he could speak. Vice-Chairman Kangas agreed. Mr. Boyd stated that he lives directly across the street. He feels that the variance should be allowed

because the house will have an unfinished look to it. It would be detrimental to the look of the neighborhood. It is a log cabin type of house and would not look right if it did not have a front porch.

Vice-Chairman Kangas called for comments or questions from the Board. Hearing none, she called for a motion to Adjourn this Public Hearing.

Motion to Adjourn the Public Hearing made by Marc Briemer

Second April Callahan

Motion Carried

Maureen Kangas – Aye

MaryAnn Leenig – Aye

Lynne Raver – Aye

Marc Breimer – Aye

April Callahan – Aye

Additional New Business

Vice-Chairman Kangas called for a motion to approve the appearance of John Andrews, Town Engineer, at the December 13, 2005 to discuss an appeal made regarding 115 Mountainview Rd.

Janis Gomez Anderson commented that there are some complicated engineering issues with the property and Mr. Andrews has already done some work on it. After a conversation with him, it was decided that it would be best for him to address the Board at the next meeting, so that when the Applicants presents their case the ZBA will have papers from him and he can explain them. Mr. Andrews needs the ZBA's authorization to present.

Vice-Chairman Kangas authorized Ms. Gomez Anderson to contact Mr. Andrews that the ZBA approves the presentation.

Deliberations

ZB05-007, Cranesville Block Company

None

ZB05-010, David Gianna and Denise Zottola

None

ZB05-013, Balanced Builders (Addition on House)

Vice-Chairman Kangas stated that she gives the Applicants a lot of credit for what they are trying to do. She feels that there is no reason not to grant the addition onto the back. They won't hurt any of the neighbors.

ZB05-014, Balanced Builders (Garage)

Vice-Chairman Kangas agreed with the Applicants that she does not want to see the trees removed. She commented on the concerns of the neighbors and the neighborhood. In Beacon Hills, too many of the residents feel that they can take it upon themselves and build whatever they want. The Applicants are different, and the Vice-Chairman doesn't have a problem with what they want to do.

Lynne Raver stated that the site visit was good. They had free reign of the property and many questions were answered that morning.

Vice-Chairman Kangas stated that the Applicants are well educated in what they want to do and presented themselves very well to the Board. She feels that they care deeply for their property. She reminded the Board that Ms. Timmer stated that they want to keep the cottage look, which you don't hear much of these days, especially from young people.

The Vice-Chairman commented that she is concerned that they have a major project to face and having a husband in the business, she is also concerned that they may begin to conduct the business from their home.

Michael Connors asked the Vice-Chairman what she meant by this. Vice-Chairman Kangas replied that they have a lot of materials on their property and she had a difficult time turning her car around on the street and she is concerned with them bringing all of the vehicles there. They don't have a large field to park their vehicles or an area to create a double driveway and she is concerned with the hardship and with the neighbors. The Vice-Chairman stated being on the Board is serious and she wants to do the right thing for the Applicants and also for the neighborhood.

Ms. Timmer replied that they have a large trailer that is kept in storage. The trailer contains the large tools and he uses the small trailer to transport tools to his job sites.

Janis Gomez Anderson made a signal and Ms. Timmer remembered that the Public Hearing was closed. Vice-Chairman Kangas advised the Applicants that the Board discusses each appeal in public.

Marc Breimer stated that his response to the site visit was seeing the topography. It is difficult to tell from a site plan the slope of a property. Seeing the property makes it more difficult to consider the placement of the garage. The garage being closer to the road may not be a problem, but at the same time the as-built may be completely different than the plans. Looking at the plans and talking with the applicants at the site, what he saw on the street were mini-mansions. He doesn't want to see Beacon Hills turned into "Long Island". Mr. Breimer stated that he has been to several communities that started as bungalow cottages and became one 3000 sq ft house jammed against another. He stated that it is nice to see something more organic that fits with the smaller cottage feel.

Vice-Chairman Kangas stated that she agreed that they want to keep the cottage look, but are they trying to squeeze too much into the little bungalow. Mr. Breimer agreed.

Mr. Breimer stated that when you run your own business you tend to bring work home. He commented that it is hard to anticipate what may happen in the future, but what the ZBA must be concerned with is the criteria for the variance. It becomes difficult because the Board Members need to weigh the values of the community against the values of individuals who have the best interest of the community in mind.

ZB05-018, Joseph & Jenna Carpenter

None

ZB05-019, Charles Lyons

None

Vice-Chairman Kangas called for a motion to Adjourn the ZBA Meeting

**Motion to adjourn the ZBA Meeting made by Lynne Raver
Second by MaryAnn Leenig**

Motion carried.

Meeting adjourned at 7:55 pm.

(Note: Nancy Lecker contacted Denise Zottola (ZB05-010) at 8:30pm November 15, to advise that the December meeting was cancelled and the Appeal was adjourned until the meeting now scheduled for January 10, 2006.)

Respectfully submitted,
Nancy Fitzgerald-Lecker
ZBA Clerk